

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Daniel J. Pomrenke

ORDER

On August 8, 2002, the Respondent filed a Motion to Dismiss this matter. The Department of Commerce filed a Memorandum in Opposition to the Motion on August 19, 2002. There were no further submissions in regard to the Motion.

Robert B. Bauer, Esq., of the firm of Severson, Sheldon, Dougherty & Molenda, P.A., Suite 600, 7300 West 147th Street, Apple Valley, MN 55124-7580, represents the Respondent, Daniel Pomrenke. Michael J. Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, represents the Department of Commerce.

Based upon all of the filings by the parties, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED: That the Motion to Dismiss is DENIED.

Dated this 21st day of August 2002.

GEORGE A. BECK
Administrative Law Judge

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MEMORANDUM

The Respondent seeks dismissal of this contested case proceeding on the grounds that the Department lacks jurisdiction to regulate or discipline him. The Respondent is employed as a loan officer by Real Estate Funding, Inc. Real Estate Funding is licensed by the Department as a mortgage originator. However, the Respondent is not licensed, nor is he required to be. The Respondent points out that the jurisdiction of an administrative agency consists only of the powers granted to it by statute.^[1] The Respondent argues that all of the provisions cited by the Department in its Notice of and Order for Hearing to sustain this action against the Respondent pertain to persons holding a license. Therefore, the Respondent contends that while the Department may discipline his employer, it has no authority to pursue regulatory action against him.

However, the Department's general regulatory authority over the mortgage origination industry appears to be broader than authority just over licensees. The statute does exempt from licensure any person who is an employee of a mortgage originator licensee.^[2] However, a person exempt from licensure is still subject to the provisions of the mortgage origination statute.^[3] Additionally, the relevant statutes give the Commissioner authority to regulate a "residential mortgage originator, servicer, applicant, or other person, an officer, director, partner, employee, or agent..."^[4] And the statute specifically provides that no person exempt from licensing under Chapter 58 shall make any false, deceptive, or misleading statement or representation in connection with a residential loan transaction.^[5] To enforce these provisions the Commissioner has civil penalty authority over persons who violate the statute.^[6]

The Respondent has also argued that the definition of residential mortgage originator contained in Chapter 58, the Residential Mortgage Originator Act, is unconstitutional in that it is overbroad and vague. The Administrative Law Judge and the Commissioner lack jurisdiction to rule on a facial constitutional challenge.^[7] The Respondent is entitled to develop any facts that might be needed for a constitutional challenge in the Court of Appeals at the contested case hearing.

G.A.B.

^[1] McKee v. County of Ramsey, 245 N.W. 2d 460, 462 (Minn. 1976).

^[2] Minn. Stat. § 58.04, subd. 1(b).

^[3] Minn. Stat. § 58.05.

^[4] Minn. Stat. § 58.12, subd. 1(a) and (b).

^[5] Minn. Stat. § 58.13, subd. 1(9).

^[6] Minn. Stat. § 45.027, subd. 6.

^[7] Neeland v. Clearwater Memorial Hospital, 257 N.W. 2d 366, 368 (Minn. 1977). In re Rochester Ambulance Service, 500 N.W. 2d 495, 500 (Minn. Ct. App. 1993).